

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5162 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
(No. 1 to 5 : No)

BELIM M ISHAK HAJI

Versus

MODASA NAGAR PALIKA

Appearance:

MR KS NANAVATI, Sr Advocate with Mr Kaushal Thakker for Petitioners
MR R.J.OZA FOR NAGARPALIKA
MR M.R.ANAND, GOVERNMENT PLEADER WITH MRS HARSHA
DEVANI, AGP for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 08/08/96

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioners ten in number seek appropriate writ or direction declaring the action of the respondents in demolishing the cabins of the petitioners on July 10, 1987 as illegal and further, to direct the respondents not

to restrain the petitioners from putting their cabins at their original place i.e. at the land bearing city survey No.3, near Town Hall of Modasa town and from reconstruction the cabins on the said land till the respondents are provided permanent constructed shops in the same vicinity, as they have provided to other 40 cabin holders. The petitioners have also claimed compensation for the illegal action of the respondents in demolishing their cabins.

2. The say of the petitioners is that, in the year 1985, Nagar Panchayat, Modasa which was subsequently converted into Nagarpalika, allowed 56 small persons to place their cabins in the city survey No.3 near Town Hall of Modasa town. They also collected Rs 50/- per month by way of charges for utilising the land from many of the petitioners. It is further stated that, out of 56 cabin holders, the first respondent decided to construct permanent shop in lieu of the cabins and at the place of existing cabins and for that purpose, an amount of Rs 3000/- each was collected from 40 cabin holders and the rent was fixed at the rate of Rs 45/- per month. 40 cabins have been constructed and allotted, however with respect to remaining 16 cabins, which belongs to the petitioners and for the construction of further five new permanent shops, totalling to 21 permanent shops, the first respondent has passed necessary resolution and applied to the second respondent years back. While, on the one hand, the second respondent has not replied on the hand without giving any notice, demolished all the 16 cabins.

3. Mr Mukat Singh Umrao Singh Gurjar, the Chief Officer of Modasa Nagar Palika has filed an affidavit stating that the State Government has issued an advertisement for widening the roads of Modasa to remove traffic congestion. It is also submitted that the encroachment in question has caused lot of hindrance to the public. It is also submitted that if the petitioners make an application to the Nagar Palika, then the Nagar Palika will consider their cases for granting alternative accommodation for putting their cabins.

4. I have heard learned counsel for the parties. The specific case of the petitioners is that their cabins were removed on 10th July 1987 and as such, they were dispossessed. However, by the interim order of this Court dated 01.10.1987, the direction was given to the respondents not to restrain the petitioners from reconstructing and putting their cabins on the land

bearing city survey No.3. It is submitted by the learned counsel that, in view of the interim order of this Court, the petitioners have put their cabins on the subject land.

5. The main grievance of the petitioners is that they have been dispossessed without following the principles of natural justice, inasmuch as no notice was given to them. Learned counsel for the petitioners has placed reliance on the decision of this Court reported in 1995 (1) GLH 1 and 29 (1) GLR 441. I am not required to enter into the question, as Mr M.R.Anand, Government Pleader has fairly submitted that the petitioners will not be dispossessed without following the principles of natural justice in accordance with the law i.e. following the procedure of section 61 of the Bombay Land Revenue Code.

6. In view of this statement and the fact that by the interim order, the cabins have been restored, nothing survives in this Special Civil Application. In case, the respondents consider that the petitioners' cabins are required to be removed, the said decision shall not be implemented for a period of one week.

7. With the aforesaid observations, this Special Civil Application is disposed of accordingly. Rule discharged. Interim relief vacated.

parmar*